IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.41 of 2006

Ms.Chandbibi Zaidi — Petitioner
Vs.
Mr.Vishnu S. Bagwe & ors. — Respondents

With
Criminal Writ Petition No.42 of 2006

Ms.Chandbibi Zaidi — Petitioner
Vs.
Mr.Claudy Forte & ors. — Respondents

With
Criminal Writ Petition No.43 of 2006

Ms.Chandbibi Zaidi — Petitioner
Vs.
Mr.S. Gopalan & ors. — Respondents

Mr.Arshad Shaikh with Mr.Gautam Yadav for petitioner.

Mr.S.M.Oak for resp.no.1.

Mr.Rahul Oak i/b. Mr.P.N.Anookar for resp.no.2.

Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

Reserved on : August 17, 2007.
Pronounced on : September 6, 2007.

ORDER

1. These three petitions have raised a common challenge and that is the power of the Labour Court to entertain a criminal complaint filed under Section

48(1) of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act (for short "the Act") and to issue process against the petitioner and hence they are being decided by a common order.

2. Mumbai Mazdoor Sabha (earlier known as Kamgar Sabha) is a duly registered Trade Union under the Trade Unions Act, 1926 and having its registered office at Kennedy House, 4th floor, Goregaonkar Road, Mumbai 400 007. The said Union is a recognised Union under the provisions of the Act within the establishment of the respondent no.2 i.e. M/s. Vidyut Metallics Pvt. Ltd. As a recognised Union it had signed several settlements with the respondent no.2 Company, inter alia, governing the service conditions of the workmen working under it and the last such settlement was signed on 3/10/1995. One of the benefits envisaged in the said settlement and even in the earlier settlements was the contribution of one day's wages by all the workmen for paying the same to the workman who had either retired or to his legal heirs in case of his death, during the course of employment along with matching contribution from the company. As per the settlement this payment was

required to be deposited with the office of the Union and thereafter the same was to be distributed to the concerned workman or in case of demised workman to his legal heirs after deducting therefrom 15 per cent towards the Union's levies by way of service charges.

3. It is claimed that the relations between the respondent Company and the Union were strained for some time and the management of the Company started defaulting on the aforesaid agreed and binding provisions as per the terms of settlement. Being aggrieved by this deliberate and wilful acts of unfair labour practices and the breach of the agreed and binding terms of the settlement, a complaint of unfair labour practice under Item 9 of Schedule IV of the Act being Complaint (ULP) No.1 of 2001 was filed by the Union through its President Mr.R.J. Mehta. In the said complaint one of the reliefs claimed pertained to the issuance of directions to the respondent - company to deposit the amount with the Union which was due and payable to the workmen who had retired and/or died during the relevant period as per the agreed and binding terms of settlement. An application under Section 30(2) of the Act was filed in the said complaint, by the company. On 7/2/2002

the learned Member of the Industrial Court passed an order on the application (Exhibit C-3) and directed the applicant company to deposit the amount with the Union. The Union was further directed to disburse the said amount to the concerned workmen or the family members of the demised workmen as the case may be, but without making any deductions therefrom. The Union was aggrieved by this order dated 7/2/2002 and, therefore, filed an application for review / modification of the said order on 14/3/2002 in the pending complaint before the Industrial Court.

4. Sometimes in the month of April 2002 a group of workmen, some of whom are impleaded as respondent no.1 in these petitions, approached the Labour Court and filed a criminal complaint individually under Section 48(1) of the Act and these complaints came to be registered as Misc. Complaint Nos.73, 61 and 58 of 2002 respectively. It was alleged that inspite of the order passed by the Industrial Court on 7/2/2002 not to effect the deductions from the amount deposited by the company with the Union, the Union while making the payment to the beneficiary workmen or to the family members, as the case may be, had in fact deducted 15 per cent amount towards the Union

levy and thus disobeyed or acted in breach of the order dated 7/2/2002 passed by the Industrial Court under Section 30(2) of the Act. It was further prayed that the Union and the President be convicted and sentenced for the said offence under Section 48(1) of the Act by the Labour Court. In addition to the Union and its President, the present petitioner was impleaded as accused no.3 in her capacity as the Chairperson of the Union. On verification of the complaint the learned Judge of the Labour Court passed an order of issuance of process on 11/6/2002 against the President of the Union Shri R.J. Mehta and the present petitioner. The present petitioner applied for her discharge from the criminal complaints and the said applications came to be rejected by a common order dated 25/9/2003. In the mean while accused no.2 - the President of the Union Shri. R.J. Mehta died on 17/7/2003.

5. The petitioner challenged this order rejecting her application for discharge in all the three complaints by filing Criminal Revision Application Nos.3/04, 1/04 and 4/04 before the Industrial Court under Section 44 of the Act. The learned Member of the Industrial Court was pleased to reject all these

applications by separate orders passed on or about 13th October 2005. The main contention of the petitioner before the Industrial Court was that the respondents - workmen who filed the criminal complaints before the Labour Court were not party in the original Complaint (ULP) No.1 of 2001 filed before the Industrial Court and, therefore, they could not lay a criminal complaint under Section 48(1) of the Act before the Labour Court. The Industrial Court held that in view of the law laid down in the case of Subramanium Sethuraman Vs. State of Maharashtra & anr. **[AIR 2004 SC 4711]**, once the process was issued under Section 204 of Cr.P.C., the Court issuing the order of process had no power to recall its own order and, therefore, the application filed by the petitioner for her discharge was not maintainable. The petitioner had also urged that she was not a party impleaded in the original complaint i.e. Complaint (ULP) No.1 of 2001 pending before the Industrial Court or in the application filed by the respondent no.2 - Company at Exhibit C-3 on which the order dated 7/2/2002 was passed by way of interim relief by the Industrial Court.

6. Almost the very same points have been

reiterated in these petitions challenging the order passed by the Labour Court rejecting the discharge application as well as the order issuing the process. It was submitted that the order dated 7/2/2002 was not at the instance of the Union and the said order was passed at the instance of the respondent no.2 - Company on its application at Exhibit C-3. Even otherwise the Union had already submitted an application for recall / review of the said order dated 7/2/2002 before the Industrial Court and the application was pending. The Union being a recognised Union within the meaning of the Act, it is well established in law that it is entitled to collect levies from the financial dues payable to its members, so as to undertake the Trade Union activities and also for making provisions for financial expenditure on account of legal fees and other charges while fighting the cause of its members. Reliance in this regard has been placed on the following judgment :

Balmer Lawrie Workers' Union, Bombay & Anr. Vs. Balmer Lawrie & Co. Ltd. & ors. **[AIR 1985 SC 311]**

7. The point of maintainability of the criminal complaint at the instance of the present respondent no.1 - individual workmen has also been vehemently argued and it is contended that an individual workman who was not a party in the main complaint before the Industrial Court has no locus standi to institute a criminal complaint against the Union and its President / Chairperson under Section 48(1) of the Act. In support of these contentions, reliance has been placed on the following decisions of this Court:

(1) Dipak Ray & Ors. Vs. Mafatlal Engineering Employees Union & Ors. **[1995 I CLR 200]**

(2) Modi Xerox Ltd. & ors. Vs. Ms. Niloo Makhija & anr. **[2005 ALL MR (Cri) 2179]**

8. Section 48 of the Act though has the title of "Contempts of Industrial or Labour Courts", it has two parts. Sub-sections (1) to (3) deal with the enabling power to punish on conviction and sentence the guilty to suffer imprisonment which may extend to

three months or six months and pay a fine of rupees 1000/- to Rs.5000/- as the case may be. Whereas sub-sections (4) to (8) deal with the definition of contempt and the procedure for making a report by the Labour Court to the Industrial Court and by the Industrial Court to this Court and this Court shall deal with such contempt as if it were contempt of itself and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the procedure and practice as it has and exercises in respect of contempt of itself. In the instant petitions we are concerned with sub-section 48(1) which reads as under:

> "48(1) Any person who fails to comply with any order of the Court under clause (b) of sub-section (1) or sub-section (2) of section 30 of this Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees."

On conviction under Section 48(1) the punishment set out is the imprisonment which may extend to three

months or with fine which may extend to Rs.5000/-. Section 48 is in Chapter IX under the heading "Penalties" in the Act whereas Chapter VIII deals with the "Powers of Labour Court and Industrial Court to try offences under the Act" Sections 38 to 41 under Chapter VIII of the Act are also relevant for our considerations. As per Section 38 the Labour Court shall have power to try offences punishable under the Act and every offence punishable shall be tried by a Labour Court within the limits of whose jurisdiction it is committed. As per Section 39 no Labour Court shall take cognizance of any offence except on a complaint of acts constituting such offence made by the person affected thereby or a recognised union or on report in writing by the Investigating Officer. Section 40 prescribes the procedure to be followed by the Labour Court in conducting the trials in respect of the offences punishable under the Act. It states that the Labour Court shall have all the powers under the Code of Criminal Procedure, 1898 (as of now the Code of Criminal Procedure, 1973) of a Presidency Magistrate in Greater Mumbai and a Magistrate of the First Class elsewhere and in the trial of every such offence the Labour Court shall follow the procedure laid down for

in Chapter XXII of the said Code for a summary trial in which an appeal lies and the rest of the provisions of the said Code shall, so far as may be, apply to such trial. As per Section 41, notwithstanding anything contained in Section 32 of of the Code of Criminal Procedure, 1898, it shall be lawful for any Labour Court to pass any sentence authorised under the Act in excess of its powers under section 32 of the said Code. Chapter XXII of the old Code is now renumbered as Chapter XXI (Summary Trials) in the Code of Criminal Procedure and Section 32 of the old Code is renumbered as Section 29 in the new Code and under sub-section (2) of Section 29 the Court of a Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or both. The punishment provided under Section 48(1) is imprisonment for three months and a fine which may extend to Rs.5000/- as noted earlier. The trials of the criminal complaints filed under Section 48(1) of the Act will be conducted as per the procedure laid down in Chapter XXI of the new Code. Section 260(1) of the new Code states that any Metropolitan Magistrate / Magistrate of First Class specially empowered in this

behalf by the High Court may try in a summary way offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Section 262 of the new Code prescribes the procedure for summary trials and it states that the procedures specified in the Code for the trial of summons cases shall be followed except mentioned therein and no sentence of imprisonment for a term exceeding three months shall be passed in case of any conviction under the said Chapter. Thus the complaint filed under Section 48(1) will have to be tried as per the procedure laid down for the trial of summons cases and by the Presiding Officers who have been vested with the powers under Section 260 of Cr.P.C. by this Court.

9. Now coming to the first ground of challenge to the order of process issued by the Labour Court viz. the locus standi of the present respondent nos.1 to file the criminal complaints under Section 48(1) of the Act, there is no dispute that the complainants are the beneficiaries of the order dated 7/2/2002 passed below Exhibit C-3 by the Industrial Court by exercising its powers under Section 30(2) of the Act. There is also no dispute that the complainants were

offered the contribution amount remitted by the Company with the Union minus 15 per cent levy charges of the Union and this was, prima facie, contrary to the order passed by the Industrial Court on 7/2/2002 wherein it was specifically stated that the contribution amount deposited by the Company with the Union shall be paid by the Union to the beneficiaries without effecting any deductions towards its levy. Section 39 of the Act states that the Labour Court shall not take cognizance of any offence except on a complaint of acts constituting such offence made by the person affected thereby or a recognised Union or on a report in writing by the Investigating Officer. The complainants are undoubtedly in the category of the "Persons affected" and, therefore, they could lay the complaint before the Labour Court as per Section 39 read with Section 48(1) of the Act. It is not necessary that the person moving the Labour Court is a party to the pending complaint. It is well recognised that a criminal complaint can be put in motion by not only an affected person but by any one on a report in writing or a complaint presented in writing before the Judicial Magistrate. It is also to be noted that the Review Application filed by the Union was pending before the Industrial Court and the

order dated 7/2/2002 was not stayed or varied in any manner when the criminal complaints came to be filed and till the revision applications were decided.

10. Section 50 of the Act which provides for recovery of money due from an employer also finds place in Chapter IX in the Act dealing with penalties and Sections 47 to 51 are under the said Chapter. Under Section 50 of the Act a remedy is provided to an employee to make an application to the Court when money is due to him from his employer under an order passed by the Court under Chapter VI, without prejudice to any other mode of recovery, and if the Court is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Such application is required to be made within one year from the date on which the money became due to the employee from the employer and the Court has the power to entertain the application filed beyond the period of one year if it is satisfied that the applicant had sufficient cause for not making the application within the said period of one year. In the instant cases one could say that the respondent

no.1 could not have approached the Industrial Court with an application under Section 50 of the Act praying for directions to issue a certificate for the 15 per cent deducted amount so that the same could be recovered by way of land revenue by the Collector as the employer had discharged its liability by obtaining, at the first instance, an order below Exhibit C-3 and subsequently by depositing the entire amount payable to the workmen concerned with the Union as per the said order. Section 50 does not envisage a recovery certificate to be issued against a Union and such a certificate has to be issued only against the employer. Thus the remedy of Section 50 of the Act was also not available to the said employees, though the said remedy is under the very same Chapter of Penalties.

11. In the case of Balmer Lawrie Workers' Union (Supra), undoubtedly the Supreme Court upheld the right of a recognised Union under the Act to collect levy / deductions of 15 per cent on the amount of arrears payable to workmen towards the Union fund by providing such a clause in the settlement between the management and such recognised union. The union is, therefore, justified in its contentions that it has a

right to recover 15 per cent amount of the total arrears payable to workmen as per the specific clause to that effect in the settlement and such a clause being available in the settlement is not in dispute. However, the 15 per cent deductions recognised in Balmer Lawrie Workers' Union (Supra) is from the amount of arrears payable and not from the amount payable to a workman who had either retired from the company service or to his legal heirs in case of his demise, during the course of employment. This was a special contribution made by every workman by giving him one day's wages and there was a matching amount to be contributed by the management and thus it was a one time benefit extended to a retiring employee or to the family members on the demise of an employee during the course of employment. This was a benevolent scheme and the form of an assistance in the times of distress and, therefore, whether the deductions at 15 per cent towards the Union levy could be held to be legal or not in such a case may not be covered by the decision in Balmer Lawrie Workers' Union (Supra). This is an issue which requires adjudication by this Court in the pending proceedings between the parties and, therefore, I do not wish to express any final opinion on the same as

of now.

12. Under Section 55 of the Act the offence under sub-section (1) of Section 48 shall be cognizable which means an offence for which a police officer may, in accordance with the First Schedule to the Cr.P.C., or under any other law for the time being in force, arrest the accused without warrant. On this backdrop the issue of the powers of the Labour Court to try the criminal complaint filed under Section 48(1) of the Act was also sought to be agitated.

. As of now the appointments of the Judges in the Labour Courts are made as per the Maharashtra Judicial Officers of the Courts of Enquiry, Labour Courts, Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rules, 1999 and there are two sources of appointments viz. by nomination and by transfer. The Judges who are transferred from the Judiciary are the Judges generally belonging to the cadre of Civil Judge, Senior Division and all such Judges have ordinarily been some time or the other invested with the summary powers under Section 260 of Cr.P.C. by this Court. On their transfer to the Labour Court, they are not prevented from exercising

the summary powers granted to them by this Court under Section 260 of Cr.P.C. while trying the complaints filed under Section 48(1) of the Act and as per the procedure laid down in Sections 38 to 40 of the Act. It is important to note in this regard that as per Section 40 of the Act, the Labour Court shall have the powers under the Criminal Procedure Code of a Metropolitan Magistrate or a Magistrate of the First Class and the Court is required to follow the procedure laid down in Chapter XXI of the new Code, for a summary trial. At the same time the Judges of the Labour Court who have been appointed by nomination will not have the powers to try the criminal complaints filed under Section 48(1) of the Act unless they are specifically vested with the powers of summary trials under Section 260 of Cr.P.C. by this Court. If a criminal complaint under Section 48(1) of the Act is filed with the Registry of the Labour Court, it must be ensured that the same is listed before a learned Judge who has been transferred from the judiciary, for the time being, so that there is no impediment in exercising the powers of summary trial and proceeding with the trials of such cases as per the procedure laid down under Sections 39 and 40 of the Act i.e. by

following the procedure for the trial of summons cases.

. In case the learned Judge of the Labour Court who has been appointed by transfer on receiving the complaint under Section 48(1) of the Act realises that he has not been conferred with the powers under Section 260 of Cr.P.C., he will have to bring the matter to the notice of the learned President of the Industrial Court of Maharashtra and wait for further orders and in the mean while, if there is no other Judge of the Labour Court at the said station appointed by transfer, he will have to keep the complaint in dormant file and without taking any cognizance. Cognizance can be taken by the learned Judge who has the powers to try the criminal complaint which implies that he has been conferred with the powers under Section 260 of Cr.P.C. The learned Judges of the Labour Court who have been appointed by nomination have not been conferred with the powers of summary trial under Section 260 of Cr.P.C. by this Court as at preset and, therefore, none of the learned Judges of the Labour Court who have been appointed by nomination will have the powers to take cognizance of the criminal complaint

filed under Section 48(1) of the Act. In the instant case Shri A.B.M. Shaikh who was the learned Judge of the Labour Court at the relevant time was appointed on transfer and he has been conferred powers of summary trials under Section 260 of Cr.P.C. He thus had the authority to entertain and take cognizance of the complaint filed by the respondents no.1.

. It is also pertinent to note in this regard that in the Labour Courts (Practice & Procedure) Rules, 1975, Chapter VIII provides for the procedure for making complaints to Magistrates under Section 48(2) and 48(3) and for taking a cognizance of and report of contempt of the Labour Court under Section 48 of the Act. However, in the said Chapter the procedure to deal with the cases filed under Section 48(1) of the Act has not been spelt out and it is apparent that the procedure as laid down under the Criminal Procedure Code for the trial of summary cases shall be applicable.

13. Though the Industrial Court did not deal with the merit of the challenge to the order of process

issued by the Labour Court while dismissing the revision applications, it needs to be noted that the procedure while issuing the order of process is the same as has been set out under Chapters XV and XVI of Cr.P.C. Section 204 which is under Chapter XVI of Cr.P.C. is regarding the procedure for issuance of process and sub-section (1) therein states that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue a summons for the attendance of the accused. At the same time no summons shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. In a proceeding instituted upon a complaint made in writing, every summons under sub-section (1) shall be accompanied by a copy of such complaint. Thus it is necessary for the learned Judge of the Labour Court to verify the complaint and on his satisfaction he has the powers to issue process against the accused. In the instant case, prima facie, there was disobedience of the order passed below Exhibit C-3 and, therefore, it cannot be said that the learned Judge of the Labour Court committed an error in issuing the process. I have gone through the process

order issued by the learned Labour Judge and he has followed the procedure laid down under Section 204 of Cr.P.C.

15. Hence these petitions fail at the threshold and they are hereby rejected summarily.

(B.H.MARL

6th September 2007

. After pronouncement of the order, the learned Counsel for the petitioner prayed for continuation of the interim relief granted earlier by this Court as the petitioner proposes to approach the Apex Court. The learned Counsel for the respondents - workmen has opposed this application.

. However, I deem it appropriate that some time is granted to the petitioner and, therefore, the interim relief granted earlier to continue for a period of six weeks more.

(B.H.MARL

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